

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 M), a California Corporation, and WILLIAM L. BRICKNER for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Alameda County Pursuant to the Public Utilities Code Section 851.

Application 02-12-033
(Filed December 20, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

The applicants request authority, under California Pub. Util. Code § 851, for Pacific Gas and Electric Company (PG&E) to sell and convey a certain parcel of real property located in Alameda County to William L. Brickner (Brickner), as described in the application. The application is opposed by the Office of Ratepayer Advocates (ORA).

A prehearing conference (PHC) in this proceeding was held at 10:00 a.m., Thursday, February 20, 2003, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102.

1. Parties to Proceeding

The applicants are PG&E and Brickner. The protestant is ORA. Applicants and the protestant are the parties to this proceeding, and they shall comply with the requirements of this ruling.

2. Principal Hearing Officer

Pursuant to Pub. Util. Code § 1701.3, Administrative Law Judge(ALJ) John E. Thorson is designated as the principal hearing officer in this proceeding.

3. Categorization and Need for Hearing

This ruling confirms the Commission's preliminary categorization in Resolution ALJ 176-3105 (January 16, 2003) of this proceeding as ratesetting. This ruling, however, modifies the Commission's preliminary determination that hearings would not be necessary. Material facts are in dispute and, unless resolved during the early phases of the proceeding, will have to be determined at an evidentiary hearing. This ruling, only as to categorization, is appealable under the provisions of Rule 6.4 of the Commission's Rules of Practice and Procedure (April 2000) (Rules).¹

4. Ex Parte Communications

Since this is a ratesetting proceeding, *ex parte* communications with the Assigned Commissioner, other Commissioners, and the ALJ are generally prohibited. The limited exceptions to this prohibition are described at Pub. Util. Code § 1701.3(c) and in Rule 7.

5. Scope of the Proceeding

In addition to its request for authorization to sell and convey real property, PG&E asks for permission to remove the property from the rate base and record the "gain-on-sale" proceeds as a benefit to its shareholders. ORA objects to this proposed treatment of the sales proceeds and asks that the entire "gain-on-sale" be assigned to ratepayers.

Additionally, in reviewing the application, the Commission must satisfy its obligations under the California Environmental Quality Act (CEQA), California Public Resources Code § 21000 *et seq.* In response to the Commission's earlier

¹ The Commission's Rules are available on the Commission's web site: www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/8508.htm.

information request, PG&E has provided additional environmental information about the property that is now part of the record and will be considered by the Commission.

6. Specific Issues to be Addressed

The specific legal and issues to be decided in this proceeding are as follows:

- a. Does the proposed transaction satisfy § 851?
- b. Is the subject property “transmission-related property”?
- c. Has the property been carried on PG&E’s books as “transmission-related property” in accordance with the Federal Energy Regulatory Commission’s (FERC’s) schedule of accounts? (Factual issue)
- d. Does the Commission or FERC have jurisdiction to decide the ratemaking treatment of the “gain-on-sale” proceeds from this transaction?
- e. If the Commission has jurisdiction to decide the ratemaking treatment of the “gain-on-sale,” should the proceeds be assigned to shareholders or ratepayers?
 - (1) Even if the Commission has jurisdiction to decide the ratemaking treatment of the “gain-on-sale” proceeds, does the Commission still apply federal law (FERC’s regulations) or state law?
 - (2) What is the authority for the PG&E’s representation that FERC requires that “gain-on-sale” proceeds from transmission-related property be assigned to shareholders?

In their motions for summary disposition, the parties shall address the issues they believe can be resolved in a summary manner.

The parties have agreed that, in deciding these issues, the Commission will determine how the “gain-on-sale” proceeds will be assigned.

7. Bankruptcy Court Transfer Authority

PG&E is involved in proceedings under the Federal Bankruptcy Code. Counsel for PG&E has assured the Commission that the Bankruptcy Court has entered a standing order allowing PG&E to transfer assets valued below a threshold amount, including the real property to be transferred here, without additional court authorization. In its next pleading to the Commission, counsel will provide the ALJ with the citation and a copy of the relevant language from this order.

8. Schedule

The schedule for this proceeding follows. The schedule includes an alternative set of dates in the event an evidentiary hearing is required. The outcome of the motions for summary disposition will determine whether an evidentiary hearing is required, and the parties need not file a motion for an evidentiary hearing.

Activity	Date	
Parties' joint settled statement of material facts	March 7, 2003	
Cross-motions for summary disposition	March 14	
Concurrent responses to motions (no replies)	March 21	
ALJ ruling on motions for summary disposition and notice concerning evidentiary hearing	March 28	
	No Hearing	Hearing
Filed testimony		April 10
Reply testimony and discovery cut-off		April 17
Evidentiary hearing		April 24-25
Concurrent opening briefs		May 23
Current responding briefs (no replies); submission date		May 30
ALJ proposed decision	April 21	June 10
Motions for final oral argument before Commission (<i>see</i> Rule 8(d))	April 25	June 16
Commission consideration	May 22	July 10

9. Meet and Confer

The parties shall meet and develop the joint settled statement of material facts described in the preceding schedule.

Within twenty days of the PHC, the parties also shall meet and discuss whether they can agree to the immediate transfer of title from PG&E to Brickner (including the procedural steps necessary to do so), reserving all remaining issues concerning the assignment of the "gain-on-sale" proceeds for determination pursuant to the above schedule. Within five days of the parties' meeting, the PG&E's counsel shall file and serve a written status report indicating whether they have come to agreement on this transfer issue and the areas of disagreement.

10. Discovery

If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. *See* Resolution ALJ-164 (Sept. 16, 1992). When filing any discovery motions, the parties shall request that the matter be heard by the ALJ assigned to this proceeding.

11. Intervenor Compensation

The PHC in this matter was held on February 20, 2003. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation on or before March 24, 2003.

12. Service List/Filing and Service of Documents

The official service list for this proceeding is attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone, or electronic mail (email) change to the service list.

The parties have agreed to distribute all pleadings and testimony in electronic form to the ALJ (jet@cpuc.ca.gov) and those parties who have provided an e-mail address to the Process Office. Additionally, the parties shall file paper copies of their documents with the Commission's Docket Office and send an additional paper copy to the ALJ.

Therefore, **IT IS RULED** as follows:

1. The parties, scope of proceedings, specific issues to be addressed, and service list are set forth in paragraphs 1, 5, 6, and 12, above.
2. Administrative Law Judge John E. Thorson is the principal hearing officer.

3. The Commission's preliminary categorization of this proceeding as ratesetting, in Resolution ALJ 176-3105 (January 16, 2003), is confirmed. An evidentiary hearing, however, is necessary.

4. The *ex parte* prohibition of Pub. Util. Code § 1701.3(c) applies to this proceeding unless otherwise allowed under § 1701.3(c) and Rule 7.

5. The schedule for the proceeding is set forth in paragraph 8. The parties shall meet and confer as required in paragraph 9.

6. Discovery disputes will be resolved pursuant to paragraph 10.

7. Any notice of intent to claim intervenor's compensation must be filed on or before March 24, 2003.

Dated March 12, 2003, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

/s/ JOHN E. THORSON

John E. Thorson
Administrative Law Judge

***** SERVICE LIST *****

**Last Update on 31-JAN-2003 by: SMJ
A0212033 NOPOST**

***** APPEARANCES *****

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(END OF SERVICE LIST)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated March 12, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.